South Boston R. Co., 150 Mass. 200, 22 N. E. 917. See *Ryan* v. *World Mutual Life Ins. Co.*, 41 Conn. 168, 171. But *cf. Blair* v. *Baird*, 43 Tex. Civ. App. 134, 94 S. W. 116. On this ground the courts refuse to attribute the knowledge of the agent to his principal, when its concealment is to the personal interest of the agent. *American Surety Co.* v. *Pauly*, 170 U. S. 133, 18 Sup. Ct. 552. See *Kettlewell* v. *Watson*, 21 Ch. D. 685, 707. But the defendant may be liable for his agent's acts, because the misrepresentations are made to a third party. *Barwick* v. *English Joint Stock Bank*, L. R. 2 Exch. 259.

ASSIGNMENTS FOR CREDITORS — RIGHTS OF CREDITORS — PROOF OF COSTS IN JUDGMENT OBTAINED AFTER ASSIGNMENT. — After an assignment for the benefit of creditors, directing the assignee to pay "all the debts and liabilities now due or to grow due," the plaintiff recovered a judgment against the assignor for a conversion which had occurred before the assignment. *Held*, that the entire judgment, including costs and interest, is provable. *Matter of Whitney*, 146 N. Y. App. Div. 45.

The decision as to the costs should not be rested on the words "to grow due" in the assignment, since they require no wider interpretation than will make them apply to claims not yet payable, though already in existence. In the absence of express words in the assignment, only claims incurred before the assignment are provable. *Weinmann and Co.'s Estate*, 164 Pa. St. 405, 30 Atl. 389. *Cf. Dean and Son's Appeal*, 98 Pa. St. 101. The reduction to judgment, however, of a claim incurred before the assignment does not so change it as to deprive the creditor of his right to prove it. *Second National Bank* v. *Townsend*, 114 Ind. 534, 17 N. E. 116. Moreover, a judgment is conclusive on the assignee, as the privy of the debtor, with regard to the amount of the indebtedness established thereby. *Matter of Roberts*, 98 N. Y. App. Div. 155, 90 N. Y. Supp. 731; *Merchants' National Bank* v. *Hagemeyer*, 4 N. Y. App. Div. 52, 38 N. Y. Supp. 626. The only exceptions ordinarily allowed are in cases of judgments obtained by fraud or collusion. See *Ludington's Petition*, 5 Abb. N. C. (N. Y.) 307, 322. But see *Garland* v. *Rives*, 4 Rand. (Va.) 282, 316. These being absent in the present case, the result reached would seem to be correct. A contrary view, however, has been taken in at least one state. *Assigned Estate of Jamison*, 163 Pa. St. 143, 29 Atl. 1001. But *cf. Pittsburgh and Steubenville R. Co.'s Appeal*, 2 Grant (Pa.) 151.

ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — COLLUSIVE DISCONTINUANCE BY CLIENT. — A., having employed B. for a contingent fee to sue C., made a collusive settlement with C., after a verdict for the plaintiff and motion for a new trial, to defeat B.'s fee. B. brought a bill in equity to restrain C. from using the agreement to procure a dismissal of the action. *Held*, that the bill will not lie, since in the trial at law B. can proceed to final judgment for his own benefit. *Burkhart* v. *Scott*, 72 S. E. 784 (W. Va.).

A valid contract for the payment of a contingent fee does not give the attorney such an interest in the cause of action as to prevent the plaintiff from compromising the suit. *Coughlin* v. *New York, etc. R. Co.*, 71 N. Y. 443; *Wright* v. *Wright*, 70 N. Y. 96. It is also clear that although an attorney has a lien for his costs on a judgment that has been obtained, he has none on the cause of action itself. *Hanna* v. *Island Coal Co.*, 5 Ind. App. 163, 31 N. E. 846. See *Sandberg* v. *Victor Gold and Silver Mining Co.*, 18 Utah 66, 76, 55 Pac. 74, 77. Where by statute a lien is given on the cause of action, it has been held that, upon the settlement of a case, the attorney, by obtaining leave of court, can prosecute the suit to judgment for his own benefit. *Manning* v. *Manning*, 61 Ga. 137; *Coleman* v. *Newsome*, 58 Ga. 132. At common law, however, this right appears to be limited to cases of collusive settlements. See *Randall* v. *Van Wagenen*, 115 N. Y. 527, 531–532. In these cases, the right would seem

to be eminently desirable for the protection of attorneys, and it is quite commonly allowed. *Jones* v. *Morgan*, 39 Ga. 310; *Pilkington* v. *Brooklyn Heights R. Co.*, 49 N. Y. App. Div. 22, 63 N. Y. Supp. 211. It has sometimes been thought that its existence is an anomaly. See *Coughlin* v. *New York, etc. R. Co.*, *supra*, 448. It is submitted, however, that it can be justified by reference to the summary or equitable jurisdiction possessed by common-law courts to prevent an abuse of their authority. See SMITH, ACTION AT LAW, 10 ed., 20–23.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — BANKRUPT'S TITLE IN CAUSE OF ACTION BEFORE APPOINTMENT OF TRUSTEE. — A voluntary bankrupt brought suit against the defendant after filing the petition, but before the election of a trustee. *Held*, that the defendant may not defeat the suit by showing the pendency of the bankruptcy proceedings. *Johnson* v. *Collier*, U. S. Sup. Ct., Jan. 9, 1912.

Though authorities are few, the better opinion seems to be that the title to the bankrupt's property after the adjudication and prior to the election of a trustee is not *in custodia legis*, but is defeasibly vested in the bankrupt. See 20 HARV. L. REV. 411; 21 *id.* 531; 25 *id.* 79.

BANKRUPTCY — SET-OFF — DEBT OF BANKRUPT AND DEBT OF CREDITOR TO TRUSTEE. — A trustee in bankruptcy sued on a claim for services rendered by him as trustee. The defendant set up a counterclaim for the failure of the bankrupt to perform a contract. This failure had occurred subsequently to the bankruptcy. The Bankruptcy Act, § 68, allows set-offs in "cases of mutual debts or mutual credits;" the set-off against the bankrupt must be a provable claim. *Held*, that the set-off should not be allowed. *Howard* v. *Magazine & Book Co.*, 131 N. Y. Supp. 916 (App. Div.).

Mutual debts must be in the same right. *Wright* v. *Rogers*, 3 McLean (U. S.) 229; *Bausman* v. *Kinnear*, 79 Fed. 172. The trustee in bankruptcy acts in a dual capacity, representing the creditors and the bankrupt. Rights and obligations passing to him from the bankrupt are in the interest of the bankrupt; obligations incurred by him subsequently, in that of the creditors. Obligations of the latter kind must be settled in full, whereas the bankrupt's creditors obtain only a dividend. The debts are clearly in different rights, and it would be unfair to give one creditor full payment, merely because he became indebted to the trustee. The English law under like statutes is in accord. *Alloway* v. *Steere*, 10 Q. B. D. 22; *West* v. *Pryce*, 2 Bing. 455. The converse of the principal case should be similarly decided. But see *In re Crystal Spring Bottling Co.*, 100 Fed. 265. The case suggests the further question whether a claim on an executory contract is provable at all. See BANKRUPTCY ACT OF 1898, § 68. If the contract is unilateral, it should be, for there is a fixed liability of the bankrupt to perform; but when it is an assignable bilateral contract, there is a contingency that the trustee will elect to make it his own and not the bankrupt's, and the provability of contingent claims is doubtful. See 23 HARV. L. REV. 636.

BANKRUPTCY — VOLUNTARY PROCEEDINGS — DISTRIBUTION OF SURPLUS. — After the principal of all approved claims against a voluntary bankrupt's estate was paid in full, together with interest to the date of filing of the petition, a large surplus remained in the hands of the trustee. *Held*, that those who held approved claims are entitled to interest accruing on them after the filing of the petition. *Johnson* v. *Norris*, 190 Fed. 459 (C. C. A., Sixth Circ.).

Under the present bankruptcy act, insolvency is not a requisite to filing a voluntary petition. BANKRUPTCY ACT OF 1898, § 4 *a*. See 1 REMINGTON, BANKRUPTCY, § 42; COLLIER, BANKRUPTCY, 8 ed., 96. But the act makes